IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 80 of 2001

to

FIRST APPEAL No 103 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

MUKUNDBHAI BABALDAS PATEL

Appearance:
Mr.Mukesh Patel, learned AGP for appellant No.1
Mr.H.L.Jani for appellant No.2
Mr.J.M.Patel for Mr.A.J.Patel for respondents - claimants.

CORAM : MR.JUSTICE M.R.CALLA
and

MR.JUSTICE D.H.WAGHELA

Date of decision: 29/03/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This group of 24 First appeals under Sec.54 of the Land Acquisition Act, 1894 read with Sec.96 of the Code of Civil Procedure preferred by the Special Land Acquistion Officer, Narmada Yojana No.11 and the Executive Engineer, Narmada Yojana Section 1/3, Kadi is directed against the common judgment and order dated 10.2.2000 passed by the Assistant Judge, Mehsana in Land Acquisition Reference Cases Nos.27/95 to 33/95 (7) and Land Acquisition Reference Cases Nos.11/95 to 17/95 (7) and Land Acquisition Reference Cases Nos.48/95 to 57/95 (10). Therefore, we propose to decide all these 24 Appeals by this common judgment and order as under:-

2. The lands of village Daran Morva, Taluka Kadi were sought to be acquired for the purpose of Narmada Canal. For this purpose, Notification under Sec.4 was issued on 17.10.91 and, thereafter, Notification under Sec.6 was issued on 12.10.92, 17.9.92 and 17.8.92. The Land Acquisition Cases Nos.85/91, 86/91 and 87/91 were decided by the Land Acquisition Officer on 2.9.94, 22.8.94 and 22.8.94 respectively. The Land Acquisition officer has determined the rate of compensation as Rs.3/-- per sq.mt. The claimants were not satisfied. They claimed Rs.30/-- per sq.mt. and took the matter for Reference under Sec.18 of the Act. The Reference Court determined the rate of compensation as Rs.28/-- per sq.mt. by granting additional compensation at the rate of Rs.25/-- per sq.mt. The Reference Court has relied upon the deposition of Mukundbhai Babaldas Patel, one of the claimants examined at Exh.11; Village Forms No.7-12 Exhibits 12 to 33; Bill of agricultural produce Exh.34; Certificate of Talati cum Mantri Exh.35 and Map Exh.36. The Reference Court has also relied upon previous award in case of the lands of village Vidaj, Taluka Kadi (Exh.37) in Land Acquisition Reference Cases Nos.1/99 to 4/99, 505/99 to 510/99 wherein the Notification under Sec.4 was issued on 29.8.91 and the lands were acquired for the purpose of Narmada Canal. In this case the Reference Court awarded compensation at the rate of Rs.28/-- per sq.mtr. and the same was reduced by the High Court to Rs.26.60 per sq.mtr. Yet another previous award, which has been relied upon, is Exh.38 with regard to the lands of village Dudhai, Taluka Kadi in Land Acquisition Reference Cases Nos.58/93 to 61/93 wherein the Notification under Sec.4 was issued on 11.12.86 and

the lands were acquired for the purpose of ONGC and the Reference Court awarded the compensation at the rate of Rs.21/- per sq.mtr. The Reference Court has also relied upon the deposition of one Shri Parfulchandra B. Solanki and deposition of one Shri Shantilal Govindlal Suthar, who were examined by the Department at Exhs.40 and 44 respectively. Exhibits 45 to 49 have also been taken note of showing the price of the lands of village Daran Morva.

3. Mr. Mukesh Patel has submitted that the Reference Court has committed an error in drawing analogy over the Award of village Vidaj and has taken us to the deposition of the claimant Mukundbhai Babaldas Patel i.e. claimant who was examined in main Land Acquisition Reference Case No.27/95. Mr.Mukesh Patel has pointed out that the claimant himself had admitted in the cross examination that the village Daran Morva was about 1.5 Kms. away from the road. There was no School beyond 5th Standard and no Hospital. There was no Railway Station or Industry. This witness has also stated in the cross examination that the village Vidaj was a bigger village and it was more developed. The village Dudhai is smaller in comparison to Daran Morva. The lands of village Dudhai were better in comparison to the lands of village Daran Morva. Mr. Mukesh Patel has submitted that the lands of village Daran Morva are also interior in comparison to the lands of village Vidaj. As against it Mr. J.M.Patel has pointed out the deposition made by the Special Land Acquisition Officer Shri Parfulchandra B.Solanki, who was examined at Exh.40. In his cross-examination he has stated that the canal in question goes from village Siyapura to Dudhai to Vidaj and Daran Morva. The village Dudhai is about 2 to 3 Kms away from Daran Morva. It has been pointed out that in case of First Appeals Nos.1088 to 1096 of 2000, which were decided by this court on 14.12.2000, the lands of village Vidaj were subject matter of acquisition in which the Notification under Sec.4 had been issued on 3.9.91 and as against the awarded amount of Rs.28/-- per sq.mt., in those cases, the High Court had reduced the rate of compensation to Rs.26.60 Ps per sq.mtr. He has also made a reference to the First Appeals Nos.2469 to 2488 of 2000 decided on 17.3.2001, in which the lands of village Daran had been acquired for the same purpose of Narmada Canal and he has also made reference to two more decisions i.e. First Appeals Nos.2445 to 2468 of 2000 and First Appeals Nos.2716 to 2741 of 2000 decided on 17.3.2001. In all these cases, the lands of village Daran had been acquired and as against the award of Rs.28/-- per sq.mtr. by the Reference Court, the High Court reduced the rate of

compensation to Rs.26.60 Ps. It has been pointed out that the lands of village Daran Morva are adjacent to the lands of village Daran. He has, therefore, submitted that in these cases also if the rate of compensation is reduced to Rs.26.60 Ps. per sq.mtr. from that of Rs.28/-- per sq.mtr. the respondents - claimants have no objection.

4. We have considered the submissions made on behalf of both the sides. Looking to the previous awards, which have been relied upon by the Reference Court in the instant case, and the orders, which have been passed by the Court in First Appeals, as referred to hereinabove, we find that in this case also the rate of compensation of Rs.28/-- per sq.mtr. deserves to be reduced to Rs.26.60 Ps. per sq.mtr. The argument raised by the learned A.G.P. is that in the deposition of the claimant himself it has become clear that the lands of village Daran Morva are not identical to that of village Dudhai and Vidaj and, therefore, in this case the amount should be further reduced. The date of notification under Sec.4 in case of village Dudhai was in the year 1986 whereas in the instant case, the date of issue of the notification under Sec.4 was 1991 and we further find that there is no significant difference with regard to the lands of village Daran Morva and the lands of villages Dudhai and Vidaj. Merely because the village Daran Morva is a little interior side in comparison to the villages Dudhai and Vidaj, it does not impinge upon the quality and fertility of the lands. All these Villages are adjacent to each other and the mere difference of 1 or 2 Kms. does not make any difference of significance in the matter of determining the rate of compensation. It may be pointed out that the village Daran is clearly nearer and adjacent to village Daran Morva and in three groups of cases decided on 17.3.2001, as above, with regard to the village Daran itself the rate of compensation was reduced from Rs.28/-- to Rs.26.60 Ps. and, therefore, we do not find any justification to make a further deduction from Rs.26.60 Ps. The rate, as has been determined by the Reference Court i.e. Rs.28/-- per sq.mtr. is, therefore, reduced to that of Rs.26.60 Ps. per sq.mtr. in this case also for the reasons stated hereinabove and to that extent, the impugned Award stands modified. In all other aspects the Award remains intact.

5. All these 24 Appeals are, therefore, partly allowed to the above extent with no order as to costs. The Registry may draw the decree accordingly.

It is expected that the due amount of

compensation to the claimants shall be paid within a period of three months from the date the certified copy of this order is produced before the concerned authority by either of the parties.

(M.R.Calla,J)

(D.H.Waghela,J)